

Rulemaking Hearing Rules

The Tennessee Department of Environment and Conservation  
Division of Natural Areas

Chapter 0400-06-02  
Rare Plant Protection and Conservation Regulations

Amendments

Rules 0400-06-02-.01, .02, .03 and .04 of Rule Chapter 0400-06-02 Rare Plant Protection and Conservation Regulations are amended by deleting them in their entirety and substituting the following so that, as amended, they shall read as follows:

0400-06-02-.01 Rare Plant Protection and Conservation-General

(1) General

(a) Purpose, Scope, and Applicability

The purpose of these regulations is to provide for the implementation of The Rare Plant Protection and Conservation Act which requires persons to obtain written permission from a landowner or manager before knowingly removing or destroying state-listed endangered plant species and requires nursery farmers to be licensed in order to sell state-listed endangered species.

(b) Use of Number and Gender

As used in these Rules:

- and
1. Words in the masculine gender also include the feminine and neuter genders;
  2. Words in the singular include the plural; and
  3. Words in the plural include the singular.

(c) Rule Structure

These Rules are organized, numbered, and referenced according to the following outline form:

(1) paragraph

(a) subparagraph

1. part

(i) subpart

(l) item

- I. subitem
  - A. section
    - (A) subsection

(2) Definitions

"Act" means "The Rare Plant Protection and Conservation Act of 1985," T.C.A. Section 70-8-301 et seq.

"Acquire," "Acquired", or "Acquisition" means to obtain, to have obtained, or the act of obtaining, by donation, or by exchange of money or other valuable consideration (specifically including barter or exchange), or to take as defined in these regulations.

"Commissioner" means the Commissioner of the Department of Environment and Conservation.  
"Conserve" or "Conservation" means to use, or the use of, all methods and procedures for the purpose of increasing the number of individuals of each resident species of plant up to levels adequate to assure their survival in their ecosystems; such methods and procedures also include all activities associated with scientific resource conservation such as research census, law enforcement, habitat protection, acquisition and maintenance, propagation, and transplantation into unoccupied parts of historic range.

"Department" means the Department of Environment and Conservation.

"Endangered species" means any species or subspecies of plant whose continued existence as a viable component of the state's flora is determined by the Commissioner to be in jeopardy, including but not limited to all species of plants determined to be "endangered species" pursuant to the Endangered Species Act.

"Endangered Species Act" means the federal Endangered Species Act of 1973, Public Law 93-205 (87 Stat. 884), 16 USC 1531 et seq., as subsequently amended.

"Habitat" means the place where a plant species grows, thus implying a particular set of environmental conditions conducive to its survival.

"Landowner" means the person having legal deed to a parcel of land, or a lessee, or any other person entitled to possession, or a manager in the case of publicly owned land.

"Nursery Farmer" means any person engaged in the practice of growing or propagating stock for sale.

"Nursery stock" means all trees, shrubs, or other perennial plants, or parts of such trees, shrubs, or other perennial plants grown or kept for, or capable of, propagation, distribution, or sale on a commercial basis.

"Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, agent, department, or instrumentality of the federal government, any state or political subdivision thereof, or any foreign government.

"Plant" means any member of the plant kingdom, including seeds, roots, cuttings, and other parts of the plant.

"Population" means individuals of a given plant species that are capable of interbreeding with one another via natural mechanisms, or are growing in close proximity, yet self-pollinating or reproducing strictly by vegetative means.

"Rare species" means any species of plant defined as endangered, threatened, or of special concern in Tennessee or pursuant to the Endangered Species Act.

"Sell" or "Sold" means to dispose of, transfer or convey, or to attempt to dispose of, transfer or convey by exchange of money or other valuable consideration, specifically including barter or exchange.

"Special Concern Species" means any species or subspecies of plant which is uncommon in Tennessee, or has unique or highly specific habitat requirements or scientific value and therefore requires careful monitoring of its status.

"Take" or "Taking" means to knowingly uproot, dig, remove, damage, destroy, possess, collect, or otherwise disturb for any purpose.

"Threatened Species" means any species or subspecies of plant which appears likely, within the foreseeable future, to become endangered throughout all or a significant portion of its range in Tennessee, including but not limited to all species of plants determined to be a "threatened species" pursuant to the Endangered Species Act.

Authority: T.C.A. §§ 4-5-201 et seq., 70-8-301, 70-8-305 and Chapter 242, Public Acts of 1985.

0400-6-2-.02 (Reserved)

Authority: T.C.A. §§ 4-5-201 et seq., 70-8-301, 70-8-305 and Chapter 242, Public Acts of 1985.

0400-6-2-.03 Promulgation of Lists

- (1) Criteria for listing a rare plant as endangered, threatened, or of special concern, shall be primarily, but not limited to, the following:
  - (a) Distribution of the species in Tennessee and throughout its range;
  - (b) Number of populations in Tennessee and throughout the species' range;
  - (c) Size of populations relative to estimates of minimal viable populations for the species;
  - (d) Habitat specificity;
  - (e) Known or perceived threats to the species and its habitats;
  - (f) Number of protected populations;
  - (g) Difficulty of adequately protecting or managing habitats for the species' survival; and
  - (h) Biological factors relating to such things as the species' ability to reproduce, respond to disturbance, or its dependence on other species that also may be in jeopardy.
- (2) Any interested person may nominate a plant species for listing as endangered, threatened, or special concern status or recommend changes in status or removal of species from the current rare plant list promulgated under the Act.

- (3) A Scientific Advisory Committee of twelve (12) botanists knowledgeable about the state's flora shall serve at the Commissioner's request to periodically review the rare plant list and consider nominations for changes to it. This group shall meet at least once every three (3) years. Reimbursement for travel and per diem expenses shall be offered by the Department at current state rates.
- (4) A public hearing shall be held prior to the addition or deletion of a species to or from the endangered or threatened species lists.
- (5) The Department shall submit its proposed list of endangered species or any amendments to it to the Commissioner of the Department of Agriculture for his concurrence.
- (6) Copies of the current list of endangered species or the list of threatened or special concern species shall be made available, upon request, by the Department of Environment and Conservation, Division of Natural Areas, 401 Church Street, Nashville, Tennessee 37243-0447.

Authority: T.C.A. §§ 4-5-201 et seq., 70-8-301, 70-8-305 and Chapter 242, Public Acts of 1985.

#### 0040-6-2-.04 List of Endangered Species

The endangered plant list of Tennessee includes the following:

Latin Name	Common Name
<i>Aconitum reclinatum</i> A.	Gray trailing wolfsbane
<i>Agalinis auriculata</i> (Michx.)	Blake Earleaved false-foxglove
<i>Agalinis oligophylla</i> Pennell	Ridge-stem false foxglove
<i>Agalinis plukenetii</i> (Ell.) Raf	Purple gerardia
<i>Allium stellatum</i> Fraser	Glade onion
<i>Anemone canadensis</i> L.	Canada anemone
<i>Anemone caroliniana</i> Walt.	Carolina anemone
<i>Apios priceana</i> Robbins	Price's potato-bean
<i>Arabis patens</i> Sullivan	Spreading rockcress
<i>Arabis perstellata</i> L. Braun	Braun's rockcress
<i>Arenaria lanuginosa</i> (Michx.) Rohrback	Wooly sandwort
<i>Aristida ramosissima</i> Engelm. ex Gray	Branched three-awn grass
<i>Asplenium scolopendrium</i> L. var. <i>americanum</i> (Fern.) Kartesz & Gandhi	Hart's-tongue fern
<i>Astilbe crenatiloba</i> (Britt.) Small	Crenate-lobed false goat's-beard
<i>Astragalus bibullatus</i> Barneby and Bridges	Pyne's ground-plum
<i>Betula papyrifera</i> Marsh var. <i>cordifolia</i> (Regel) Fern.	Heart-leaved paper birch
<i>Brachydontium trichodes</i> (Web.) Milde	Peak moss
<i>Bulbostylis ciliatifolia</i> (Ell.) Fern. var. <i>coarctata</i> (Ell.) Kral	Capillary hairsedge
<i>Calamagrostis cainii</i> Hitchcock	Cain's reedgrass
<i>Calamagrostis porteri</i> A. Gray	Porter's reedgrass
<i>Calamovilfa arcuata</i> K.E. Rogers	Cumberland sandgrass
<i>Calopogon oklahomensis</i> D.H. Goldman	Oklahoma grass-pink
<i>Caltha palustris</i> L.	Marsh marigold
<i>Carex alopecoidea</i> Tuckerm.	Foxtail sedge
<i>Carex barrattii</i> Schweinitz and Torr.	Barratt's sedge
<i>Carex manhartii</i> Bryson	Manhart's sedge
<i>Carex muskingumensis</i> Schweinitz	Muskingum sedge
<i>Carex pellita</i> Willd.	Woolly sedge

Carex roanensis Hermann	Roan mountain sedge
Carex sterilis Willd.	Sterile sedge
Carex utriculata Boott.	Northwest Territory sedge
Carex vestita Willd.	Velvety sedge
Cephaloziella messalongi (Spruce) K. Muell.	a liverwort
Cerastium velutinum Raf.	Velvety cerastium
Clematis glaucophylla Small	White-leaved leatherflower
Clematis morefieldii Kral	Huntsville vasevine
Clethra alnifolia L.	coastal pepperbush
Coeloglossum viride (L.) Hartman var. virescens (Muhl. ex Willd.) Luer	Long-bracted green orchis
Collinsia verna Nutt.	Spring blue-eyed Mary
Comptonia peregrina (L.) Coulter	Sweet-fern
Coreopsis latifolia Michx.	Broad-leaved tickseed
Coreopsis delphiniifolia Lam.	Larkspur-leaved coreopsis
Corydalis sempervirens (L.) Pers.	Pale corydalis
Crataegus harbisonii Beadle	Harbison's hawthorn
Crotalaria purshii DC.	Pursh's rattlebox
Croton alabamensis E.A. Smith	Alabama croton
Cypripedium kentuckiense Reed	Southern lady's-slipper
Cypripedium reginae Walt.	Showy lady's-slipper
Dalea foliosa (A. Gray) Barneby	Leafy prairie-clover
Dalea purpurea Vent.	Purple prairie-clover
Delphinium exaltatum Ait.	Tall larkspur
Desmodium ochroleucum M.A. Curtis ex Canby	Creamflower tick-trefoil
Diamorpha smallii Britt.	Small's stonecrop
Dichantherium aciculare (Desv. ex Poir.) Gould & C.A. Clark	Needleleaf witchgrass
Dichantherium acuminatum subsp. spretum (Schult.) Freckmann & Lelong	Eaton's witchgrass
Dichantherium ensifolium subsp. curtifolium (Nash) Freckmann & Lelong	Short-leaved panic grass
Echinacea tennesseensis (Beadle) Small	Tennessee coneflower
Eleocharis equisetoides (Ell.) Torr.	Horse-tail spike-rush
Eleocharis intermedia J.A. Schultes	matted spike rush
Eleocharis wolfii A. Gray	Wolf's spike rush
Elymus svensonii Church	Svenson's wild-rye
Eriocaulon decangulare L.	Ten-angle pipewort
Eriogonum longifolium Nutt. var. harperi (Goodm.) Reveal	Harper's umbrella-plant
Eriophorum virginicum L.	tawny cotton grass
Erysimum capitatum (Dougl.) Greene	Western wallflower
Eupatorium leucolepis (DC.) Torr. and A. Gray	White-bracted thoroughwort
Eurybia saxicastelli (J. J. N. Campbell & Medley) G. L. Nesom	Rockcastle aster
Fimbristylis perpusilla Harper	Harper's fimbristylis
Gentiana puberulenta J.S. Pringle	Prairie gentian
Geum geniculatum Michx.	Bent avens
Geum radiatum Michx.	Spreading avens
Griatiola floridana Nutt.	Florida hedge-hyssop
Hedyotis purpurea (L.) Torr. & A.Gray var. montana (Small) Fosberg	Roan Mountain bluet
Helenium brevifolium (Nutt.) Wood	Shortleaf sneezeweed
Helianthemum bicknellii Fern.	Plains frostweed

Helianthemum canadense (L.) Michx.	Canada frostweed
Helianthemum propinquum E.P. Bicknell	low frostweed
Helianthus verticillatus Small	Whorled sunflower
Homaliadelphus sharpii (Williams) Sharp	Sharp's homaliadelphus
Hydrocotyle americana L.	American water-pennywort
Hypericum adpressum Barton	Creeping St. John's-wort
Hypericum ellipticum Hook.	Pale St. John's-wort
Hypericum graveolens Bickl.	Mountain St. John's-wort
Iris brevicaulis Raf.	Lamance iris
Isoetes melanopoda Gay and Durieu	Blackfoot quillwort
Isoetes tennesseensis N.T. Luebke & J.M. Budke	Hiwassee quillwort
Isotria medeoloides (Pursh) Raf.	Small whorled pogonia
Juncus trifidus L. var. carolinianus Hamet-Ahti	Highland rush
Kalmia angustifolia L. var. carolina (Small) Fern.	Sheep-laurel
Lachnanthes carolina (Lam.)	Dandy Carolina redroot
Lachnocaulon anceps (Walt.) Morong	Bog-buttons
Leavenworthia exigua Rollins var. lutea Rollins	Pasture glade-cress
Lechea pulchella Raf.	Leggett's pinweed
Lejeunea sharpii (Schust.) Schust.	Sharp's lejeunia
Leptodontium viticulosoides var. sulphureum (Müller Hal.) R. H. Zander	Grandfather mountain leptodontium
Leptohymenium sharpii (Crum & Anders.) Buck & Crum	Mount Leconte moss
Leptoscyphus cuneifolius (Hook.) Mitt.	a liverwort
Lesquerella globosa (Desv.) S. Watson	Short's bladderpod
Lesquerella perforata Rollins	Spring Creek bladderpod
Lesquerella stonensis Rollins	Stones River bladderpod
Lilium grayi S. Wats.	Gray's lily
Lilium philadelphicum L.	Wood lily
Linnaea borealis L.	Twinflower
Listera australis Lindl.	Southern twayblade
Lonicera prolifera (Kirchner) Rehder	Grape honeysuckle
Lycopodium annotinum L.	Stiff clubmoss
Lysimachia fraseri Duby	Fraser's loosestrife
Lysimachia terrestris (L.) BSP.	Swamp loosestrife
Maianthemum stellatum (L.) Link	Starflower false Solomon's-seal
Marshallia grandiflora Beadle and Boynton	Large-flowered Barbara's-buttons
Marsipella funckii (Web. & Mohr) Dumort.	a liverwort
Melanthium latifolium Desr.	Broadleaf bunchflower
Melanthium virginicum L.	Virginia bunchflower
Melanthium woodii (J.W. Robbins ex Wood) Bodkin	Ozark bunchflower
Minuartia cumberlandensis (Wofford & Kral) McNeill	Cumberland sandwort
Minuartia godfreyi (Shinners) McNeill	Godfrey's stitchwort
Minuartia groenlandica (Retzius) Ostenfeld	Mountain sandwort
Muhlenbergia cuspidata (Torr.) Rydb.	Plains muhly
Muhlenbergia torreyana (Shult.) Hitchcock	Torrey's dropseed
Nestronia umbellula Raf.	Nestronia
Onosmodium hispidissimum Mack.	Shaggy false gromwell
Onosmodium molle Michx. ssp subsetosum (Mack & Bush) Cochrane	Smooth false gromwell
Paxistima canbyi A. Gray	Canby's mountain-lover
Perideridia americana (Nutt. ex DC. ) Reichenb.	Thicket parsley
Pityopsis ruthii (Small) Small	Ruth's golden-aster
Plantago cordata Lam.	Heart-leaved plantain

Platanthera grandiflora (Bigelow) Lindl.	Large purple fringed orchid
Platanthera integra (Nutt.) A. Gray ex Beck	Yellow fringeless orchid
Platanthera integrilabia (Correll) Luer	White fringeless orchid
Platanthera nivea (Nutt.) Luer	Snowy orchid
Poa palustris L.	owl bluegrass
Pogonia ophioglossoides (L.)Ker-Gawl.	Rose pogonia
Polygala nana (Michx.) DC.	Dwarf milkwort
Polygala nuttallii Torr. and A. Gray	Nuttall's milkwort
Polygonella americana (Fisch. and Mey)	Small Southern jointweed
Ponthieva racemosa (Walt.) Mohr	Shadow-witch
Porella sp. nov. (sp. 1)	Hot porella
Prenanthes aspera Michx.	Rough rattlesnake-root
Prunus pumila L.	sand cherry
Pycnanthemum beadleii (Small) Fern.	Beadle's mountain mint
Prenanthes crepidinea Michx.	Nodding rattlesnake-root
Pycnanthemum verticillatum (Michx.) Pers.	Whorled mountain-mint
Pyrola americana Sweet	American wintergreen
Ranunculus aquatilis var. diffusus Withering	Eastern white water crowfoot
Rhamnus alnifolia L'Her.	Alderleaf buckthorn
Rhynchosia latifolia Nutt.	Prairie rhynchosia
Rhynchospora alba (L.) Vahl	White beakrush
Rhynchospora capillacea Torr.	Horned beakrush
Rhynchospora latifolia (Baldw.) Thomas	Giant white-top sedge
Rhynchospora rariflora (Michx.) Ell.	Few-flowered beak-rush
Rhynchospora wrightiana Boeckler	Wright's beak-rush
Rudbeckia triloba L. var. pinnatifida Torrey & A. Gray	browneyed Susan
Rugelia nudicaulis Shuttlw. ex Chapman	Rugel's ragwort
Sabatia capitata (Raf.) Blake	Rose gentian
Sanguisorba canadensis L.	Canada burnet
Sarracenia oreophila (Kearney) Wherry	Green pitcher plant
Saxifraga caroliniana A. Gray	Carolina saxifrage
Saxifraga pensylvanica L.	Swamp saxifrage
Schwalbea americana L.	Chaffseed
Scutellaria arguta Buckl.	Hairy scullcap
Sedum nevii A. Gray	Nevius' stonecrop
Seymeria cassioides (J.F. Gmelin) Blake	Seymeria
Sida hermaphrodita (L.) Rusby	Virginia mallow
Silene ovata Pursh	Ovate catchfly
Silene regia Sims	Royal catchfly
Silphium brachiatum Gattinger	Cumberland rosinweed
Silphium wasiotense Medley	Kentucky rosinweed
Solidago gattingeri Chapm.	Gattinger's goldenrod
Solidago lancifolia Torr. and A. Gray	Broadleaf goldenrod
Solidago ptarmicoides (Nees) Bovin	Prairie goldenrod
Solidago rupestris Raf.	Rock goldenrod
Solidago spithamaea M.A. Curtis	Blue ridge goldenrod
Sparganium androcladum (Engelm.) Morong	Branching bur-reed
Sphenolobopsis pearsoni (Spruce) Shust. & Kitag.	Sphenolobopsis
Spiraea alba DuRoi	Narrow-leaved meadow-sweet
Spiraea virginiana Britt.	Virginia spiraea
Spiranthes ochroleuca (Rydb.) Rydb.	Yellow nodding ladies'-tresses
Spiranthes odorata (Nutt.) Lindl.	Sweetscent ladies'-tresses
Stellaria alsine Grimm	Trailing stitchwort
Stellaria longifolia Muhl.	Longleaf stitchwort

*Stenanthium diffusum* Wofford  
*Sullivantia sullivantii* (Torr. & Gray) Britt.  
*Symphotrichum praealtum* (Poiret) G. L. Nesom  
*Symphotrichum pratense* (Rafinesque) Nesom  
*Symplocarpus foetidus* (L.) Nutt.  
*Taxus canadensis* Marsh.  
*Tetragonotheca helianthoides* L.  
*Thaspium pinnatifidum* (Buckley) A. Gray  
*Thelypteris simulata* (Davenport) Nieuwl.  
*Tortula ammonsiana* Crum & Anders.  
*Tortula fragilis* Tayl.  
*Triantha racemosa* (Walter) Small  
*Trichophorum cespitosum* (L.) Hartman  
*Trifolium calcaricum* J.L. Collins & Wieboldt  
*Trifolium reflexum* L.  
*Trillium decumbens* Harbison  
*Trillium lancifolium* Raf.  
*Trillium pusillum* Michx.  
*Trillium rugelii* Rendle  
*Utricularia cornuta* Michx.  
*Vaccinium elliotii* Chapm.  
*Veronica catenata* Pennell  
*Veronica scutellata* L.  
*Viburnum bracteatum* Rehd.  
*Viburnum molle* Michx.  
*Vitis rupestris* Scheele  
*Xyris ambigua* Beyr. ex. Kunth.  
*Xyris fimbriata* Ell.  
*Xyris tennesseensis* R. Kral  
*Zigadenus glaucus* Nutt.

Cumberland featherbells  
*Sullivantia*  
 Willow aster  
 Barrens silky aster  
 Skunk-cabbage  
 American yew  
 Pineland squarehead  
 Cutleaf meadow parsnip  
 Bog fern  
 Ammon's tortula  
 Fragile tortula  
 Coastal false-asphodel  
 Tufted club-rush  
 Running glade clover  
 Buffalo clover  
 Trailing trillium  
 Narrow-leaved trillium  
 Least trillium  
 Southern nodding trillium  
 Horned bladderwort  
 Mayberry  
 Sessile water-speedwell  
 Marsh-speedwell  
 Limerock arrowwood  
 Softleaf arrow-wood  
 Rock grape  
 Coastal-plain yellow-eyed-grass  
 Fringed yellow-eyed-grass  
 Tennessee yellow-eyed-grass  
 White camas

Authority: T.C.A. §70-8-305, 4-5-201 et seq., 70-8-301, et. seq. Administrative History: Original rule filed May13, 1986; effective June 12, 1986. Amendment filed April 27, 1992; effective June 11, 1992. Amendment filed July14, 1999; effective September 27, 1999. Amendment filed October 23, 2000; effective January 6, 2001. Amendment filed October 5, 2004; effective December 19, 2004.

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 30th day of May, 2008, and will become effective on the 13th day of August, 2008. (FS05-19-08; DBID 2890)

#### Economic Impact Statement

- (1) Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:

Type or types of small business: Any nursery farmer selling or exporting Tennessee listed endangered plants.



Estimate  
of the number  
of small  
businesses:

There are approximately 9 endangered plant dealers in Tennessee.  
It is unknown as to how many would qualify as a small business  
since the number of employees for each is unknown.

- (2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

There are no new recordkeeping or reporting requirements or administrative costs contained in the amendments to rules 0400-06-02-.01, .02, .03 and .04.

- (3) A statement of the probable effect on impacted small businesses and consumers:

The amendments to rules 0400-06-02-.01, .02, .03 and .04 will have little effect on small businesses due to the fact that very few nurseries sell native plants and those plants that are listed are for the most part very obscure species that are not popular in cultivation.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:

The amendments to rules 0400-06-02-.01, .02, .03 and .04 affect only a very small fraction of the nursery industry at present and the burden consists of one form to fill out each year. Any measures less burdensome would not achieve the purpose of the rule.

- (5) A comparison of the proposed rule with any federal or state counterparts:

The Endangered Species Act of 1973 (16 U.S.C. 1531-1544) is much more stringent and comprehensive than the amendments to rules 0400-06-02-.01, .02, .03 and .04. The federal law covers fewer plant species in Tennessee but the regulations are more restrictive.

- (6) Analysis of the effect of the possible exemption of small business from all or any part of the requirements contained in the proposed rule:

Removal of the rule would allow anyone to sell state-endangered plants without monitoring or restriction thus contributing to their decrease in the wild.